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UNITED NATIONS COMMISSION
ON INTERNATIONAL TRADE LAW
Working Group on
Electronic Data Interchange
Twenty-eighth session
Vienna, 3-14 October 1994

PROVISIONAL AGENDA

1. Election of officers
2. Adoption of the agenda
3. Preparation of model statutory provisions on the legal aspects of electronic data interchange (EDI) and related means of data communication
4. Other business
5. Adoption of the report

Notes on the provisional agenda

Pursuant to a decision taken by the Commission at its twenty-fourth session [1], in 1991, the Working Group on International Payments devoted its twenty-fourth session to identifying and discussing the legal issues arising from the increased use of EDI. The Working Group recommended that the Commission should undertake the preparation of legal rules on the use of EDI in international trade (A/CN.9/360, paras. 129-133).

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[1] Official Records of the General Assembly, Forty-sixth Session, Supplement No. 17 (A/46/17), paras. 306-317.

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The Commission, at its twenty-fifth session, in 1992, endorsed that recommendation and entrusted the preparation of legal rules on EDI to the Working Group on International Payments, which it renamed the Working Group on Electronic Data Interchange. [2/]

The Working Group on Electronic Data Interchange devoted its twenty-fifth to twenty-seventh session to the preparation of uniform rules on the legal aspects of EDI (reports of those sessions are found in A/CN.9/373, 387 and 390). The work has been carried out on the basis of background working papers prepared by the Secretariat on possible issues to be included in the uniform rules (A/CN.9/WG.IV/WP.53 and WP.55). The draft articles of the uniform rules, which the Working Group decided should be prepared in the form of statutory provisions, were presented by the Secretariat in A/CN.9/WG.IV/WP.57 and WP.60).

At its twenty-seventh session, in 1994, the Commission had before it the reports of the Working Group on the work of its twenty-sixth and twenty-seventh sessions (A/CN.9/387 and A/CN.9/390). The Commission expressed its appreciation for the work accomplished by the Working Group and noted that the Working Group had decided to use the term "model statutory provisions" in order to reflect the special nature of the text as a variety of statutory rules that an enacting State would not necessarily incorporate as a whole or together in any one particular place in its statutes (A/CN.9/390, paras. 16-17).

As to the time schedule for completion of the current work of the Working Group, the view was expressed that it might be difficult to complete the current work within one year and submit the model statutory provisions to the Commission at its next session since a number of issues, such as scope of application and party autonomy, still remained to be resolved, and that, at any rate, the Commission might not have sufficient time available on the agenda of its next session to consider the rules. The prevailing view, however, was that a draft set of basic, "core" provisions could be completed by the Working Group at its twenty-eighth or twenty-ninth session, in particular since it had been decided that the relationships between EDI users and public authorities, as well as consumer transactions, should not be the focus of the model statutory provisions (ibid., para. 21). It was pointed out that further provisions could be added at a later stage, in particular since that was an area of rapid technological development.

As to possible future topics, the Commission noted that, at its twenty-seventh session, the Working Group had adopted a recommendation to the Commission that preliminary work should be undertaken on the issue of negotiability and transferability of rights in goods in a computer-based environment as soon as it had completed the preparation of the model statutory provisions (ibid., para. 155). That recommendation received general support. Another suggestion was that a broader approach should be adopted so as to include in any future work the negotiability of rights in securities. That suggestion was objected to on the ground that it might be particularly difficult to achieve uniformity on that concept in view of the high degree of regulation at the national level. Yet another suggestion, which received some support, was that the Commission should consider the legal issues arising in the context of the relationships between EDI users and service providers, such as electronic communications networks. However, recalling the discussion of that suggestion at the twenty-seventh session of the Working Group (ibid., para. 159), the Commission was of the

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2/ Ibid., Forty-seventh Session, Supplement No. 17 (A/47/17), paras. 140-148.

view that, at least at the current stage, liability of service providers was better dealt with in communications agreements and that, at any rate, it would be very difficult to devise rules that would apply to all types of electronic communications services. Yet another suggestion was to prepare a study on legal issues of encryption. With regard to that suggestion, the view was expressed that the matter fell more appropriately within the mandate of specialized national or international bodies. [3/]

The Working Group is composed of all States members of the Commission. These are:

Argentina, Austria, Bulgaria, Cameroon, Canada, Chile, China, Costa Rica, Denmark, Ecuador, Egypt, France, Germany, Hungary, India, Iran (Islamic Republic of), Italy, Japan, Kenya, Mexico, Morocco, Nigeria, Poland, Russian Federation, Saudi Arabia, Singapore, Slovakia, Spain, Sudan, Thailand, Togo, Uganda, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America and Uruguay.

Item 1. Election of officers

The Working Group, in accordance with its practice at previous sessions, may wish to elect a Chairman and a Rapporteur.

Item 3. Preparation of uniform rules on the legal aspects of electronic data interchange (EDI) and related means of data communication

The Working Group will have before it a note by the Secretariat containing a newly revised draft of model statutory provisions on the legal aspects of EDI and related means of data communication: articles 1 to 10 (A/CN.9/WG.IV/WP.62). The Working Group may wish to use the note as a basis for its deliberations.

The following documents will be made available at the session:

(a) Report of the Secretary-General on the Legal Value of Computer Records (A/CN.9/265);

(b) Report of the Secretary-General on Electronic Data Interchange - Preliminary study of legal issues related to the formation of contracts by electronic means (A/CN.9/333);

(c) Report of the Secretary-General on Electronic Data Interchange (A/CN.9/350);

(d) Note by the Secretariat discussing possible issues to be included in the programme of future work on the legal aspects of EDI (A/CN.9/WG.IV/WP.53);

(e) Report of the Working Group on International Payments on the work of its twenty-fourth session (A/CN.9/360);

3/ Ibid., Forty-ninth Session, Supplement No. 17 (A/49/17), paras. 198-201.

(f) Note by the Secretariat outlining possible uniform rules on the legal aspects of electronic data interchange (EDI) (A/CN.9/WG.IV/WP.55);

(g) Report of the Working Group on Electronic Data Interchange on the work of its twenty-fifth session (A/CN.9/373);

(h) Note by the Secretariat containing a first draft of uniform rules on the legal aspects of EDI and related means of trade data communication (A/CN.9/WG.IV/WP.57);

(i) Note by the Secretariat containing the text of a proposal by the United Kingdom of Great Britain and Northern Ireland (A/CN.9/WG.IV/WP.58);

(j) Report of the Working Group on Electronic Data Interchange on the work of its twenty-sixth session (A/CN.9/387);

(k) Note by the Secretariat containing revised articles of draft uniform rules on the legal aspects of EDI and related means of data communication (A/CN.9/WG.IV/WP.60);

(j) Report of the Working Group on Electronic Data Interchange on the work of its twenty-seventh session (A/CN.9/390).

Item 5. Adoption of the report

The Working Group may wish to adopt, at the close of its session, a report for submission to the twenty-eighth session of the Commission (to be held from 2 to 26 May 1995 at Vienna).

Meetings

The session of the Working Group will take place from 3 to 14 October 1994 at the Vienna International Centre. There will be 8 working days available for consideration of the agenda items at the session. No meeting will be scheduled for Thursday, 13 October, in order to allow for the preparation of the draft report of the session. Meeting hours will be from 9:30 to 12:30 and from 14:00 to 17:00, except on Monday, 3 October 1994, when the session will commence at 10:00.